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Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1993

GERALD BUDD and CAROLYN BUDD

Petitioners,

vs.

CITY OF SEWARD, ALASKA,

ICICLE SEAFOODS INCORPORATED, d/b/a

SEWARD FISHERIES,

JOHN DOE NO. 1,

Respondents.

Petition for Writ of Certiorari to the Supreme Court for the State of Alaska

---

Petition for Writ of Certiorari

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52 pp

QUESTIONS PRESENTED

1. May a Justice of a State Supreme Court, against Alaska Rules of Appellate Procedure alter a Pleading to Something it is not, and then Dismiss an Appeal which is a Matter of Right, Prior to the Case Being Briefed, also in Violation of a State Statute?.....6

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PARTIES INVOLVED

1. Gerald & Carolyn Budd, husband and wife, Plaintiffs/Petitioners.
2. City of Seward Alaska, a municipal corporation.
3. Icicle Seafoods, Inc., an Alaska Corporation, d/b/a Seward Fisheries.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Gerald Budd, and Carolyn Budd, (hereinafter petitioners or plaintiffs), pray that a writ of certiorari issue to review the judgement of the Supreme Court

of Alaska, illegally and unconstitutionally dismissing the appeal before that court, and appeal brought by the petitioners.

COURT ORDER BELOW

The ORDER dismissing the appeal issued by the Supreme Court of Alaska, Budd v. City of Seward, No. S-6029, filed 24 November 1993, is attached to this Petition, and marked as App. A, and consists of page 1. The ORDER is unpublished.

JURISDICTION

(i) The date of the entry of the judgement sought to be reviewed is 24 Novenber 1993, and ORDER dismissing the appeal.

(ii) No petition for rehearing was filed in the Alaska Supreme Court, and no extentions respecting time for filing petition for certiorari have been sought in this Court.

(iii) No cross-petition exists.

(iv) This Court has jurisdiction to review the judgement in question via certiorari, pursuant to 28 U.S.C. 1257(a) and Rule 13.1 of this Court.

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law...."

STATUTES AND RULES OF COURT

Alaska Statute 22.05.010, Jurisdiction of the Alaska Supreme Court. See Appendix.

Rule 503, Alaska Rules of Appellate Procedure. "Motions" See Appendix.

STATEMENT OF THE CASE

The original action dealt with personal injury on the Seward, Alaska waterfront. The case was dismissed by a Judge who had not been assigned the case. Sanctions were upon the Plaintiffs due to the failure on the part of counsel to provide discovery, The Plaintiffs supplied the requested discovery, yet, as already stated, counsel for the plaintiffs failed to supply said discovery to the opposition, which resulted in sanctions being imposed pursuant to Rule 37, Alaska Rules of Civil Procedure.

The matter was appealed to the Supreme Court of Alaska, and the notice of appeal was timely filed on 15 October 1993, well before the expiration of the 30 days, which is extentable in Alaska. The plaintiffs were to file an itemized "Designation of Record" before the appeal could proceed, which the plaintiffs were working on when Justice Moore

dimissed the appeal on 24 November 1993.

As a matter of law, Justice Moore could not have dismissed the appeal, for said appeal was as a matter of right. The plaintiffs appeal to this court via 28 U.S.C. 1257.

1. A Justice of a State Supreme May Not, Against All Rules of Court, Alter a Pleading to Suit a Particular Purpose, and Dismiss an Appeal that is By State Statute a Matter of Right. A Justice May Not Violate a State Statute or Rule of Court.

To begin with, in Alaska, the time limit for filing a notice of appeal is not jurisdictional, and requirements may be relaxed or dispensed with where a strict application of the rules would be unfair. Radich v. Fairbanks Builders Inc., 390 P.2d 215, 217, Alaska, (1965). In the instant case, the appeal was timely coming from the superior court to the Alaska Supreme Court. The notice of appeal was merely refused because an itemized "designation of record" was not with the appeal documents. The error was corrected, and the appeal filed. At any rate, the perfection of the appeal was within the thirty day limitation of Alaska Appallte Rule 203.

In 48A C.J.S. "Judges", Section 7, the Nature of the office of judge is defined as follows:

> "...The character of the office of a judge is generally determined by the nature of powers it contains and the duties it imposes, as specified by the constitutional or statutory provisions creating the office..."

In 46 Am Jur 2d "Judges", Section 22 defines the powers and duties of judges:

> "..The powers of a judge are those that are conferred upon him by the constitution and by statute and those who inherent in his office. The duties of the office of judge include all those that fairly lie within its scope, those that are essential to the accomplishment of the main purposes for which the office was created, and those, that, although incidental and collateral, are germane to or serve to promote or benefit the accomplishment of the principle purposes. All such duties are official, and the imcumbant is obliged to perform them. Duties not so related to an office are unofficial and cannot, as a general rule, rightfully be attached to it, and the incumbant is not obliged to perform them...."

The point is an individual justice of the Alaska Supreme Court, via statutory or constitutional authority cannot make individual determinations concerning the merits of an appeal unless that matter is heard by the whole court. See Alaska Appellate Rule 503(5)(f).

This Rule bars an individual Justice from entertaining the merits of a controversy.

Since the Chief Justice of the Alaska Supreme Court could not enter the ORDER he did, he acted outside his jurisdiction, and the ORDER is null and void as a matter of law.

In 48A C.J.S. "Judges", Section 36, it is stated:

> Nature of Conduct Proscriber and Disabilities. It is a basic requirement, under general guidelines and canons of judicial conduct, that a judge's official conduct be free from impropriety and the appearance of impropriety, and that both his official and personal behavior be in accordance with the highest standard society can expect. The standard of conduct is higher than that expected of lay people, and also higher than that expected of attorneys. The ultimate standard must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office, and judges must so comport themselves as to dignify the administration of justice and deserve the confidence and respect of the public. It is immaterial that the conduct deemed objectionable is probably lawful albeit unjudicial, or that it is perceived as low humored horseplay.

In particular, a judge should refrain from participation in activities which may tend

to lessen public respect for his judicial office and avoid conduct which may give rise to a reasonable belief that he has so participated.....

> .....In carrying out his duties, a judge must be fair and impartial, and conduct himself in court in a manner which promotes public confidence in the integrity and impartiality of the judiciary...."

In Beckle v. Beckle, 452 P.2d 205, 210, Wyomong, (1969), the Wyoming Supreme Court found that the actions of a lower court could not affect an appeal, and citing 4 C.J.S. "Appeal & Error", Section 206, found that where a right to appeal is given to a party by statute as a matter of right, the court cannot, by provision in the judgement or decree, or OTHERWISE (emphasis added) deprive him of such right.

In Vining v. Kovarik, 116 N.W.2d 638, 639, South Dakota, (1962), the Supreme Court of South Dakota found the statutory right to appeal to be favored, and stated nothing short

of the most compelling grounds would warrant a denial of that right.

In Osborn v. Empire Life Insurance Co. of America, 342 So.2d 763, 765, Alabama, (1977 the Alabama Supreme Court found that once the Supreme Court had jurisdiction in a case, a party could not unilaterally extinquish the other parties right to appeal.

The instant case reflects a motion, filed by the opposition entitled: "Opposition to Motion to Accept Late Notice of Appeal." This motion could not extinquish the petitioners right to appeal to the Alaska Supreme Court. Yet the Chief Justice of the Alaska Supreme Court, Daniel A. Moore Jr. treated the motion as one for "reconsideration" then dismissed the appeal and closed the case. Under Alaska Appellate Rule 503, any motion for reconsideration would have to be heard by the FULL COURT. (emphasis added). So Justice Moore, in pursuit of the dismissal of the instant case committed another "impropriety" by treating the

opposition's motion the way he did.

In Rea v. Rea, 245 P.2d 884, 895, (1952) the Oregon Supreme Court found:

> "...(1) The right of appeal, and a fortiori, the right to a trial de novo, is not a constitutional right but a statutory privilege. (footnote ommited). The privilege may be waived and waiver may be implied from conduct.
> (2) Waiver of the right to appeal or estoppel may result from acquiescence in the orders and proceedings of the lower court or in submission thereto without objection..."

Such does not apply in the instant case, for the appeal had to have taken place, because nothing at all was waived.

In Alaska, the Supreme Court is moot on the subject of whether appeals are a creature of statute. or constitutional in nature. In otherwords, the Alaska Supreme Court has not ruled that an appeal is of right deriving from the State Constitution, or from a State Statute. Article I, Section 7 of the Alaska Constitution could mandate an appeal as a matter of right, and Amendment 14 could be read into the statute. Surely, due process is part of an appeal, and

this Court, in Douglas v. California, 372 U.S. 353, 356, (1963) found that where a state does provide for an appeal, it must meet the requirements of due process and equal protection under the Fifth and Fourteenth Amendments of the Federal Constitution.

In the 9th Circuit, where Alaska is located, the Court of Appeals found that states may mandate a particular procedure for reviewing constitutional issues used to exclusion of other avenues, so long as the right of review is not unduly limited or foreclosed. Turner v. Campoy, 827 F.2d 526, 531, 9th Circuit, cert denied 489 U.S. 1059, (1987).

In 4 Am Jur. 2d "Appeal & Error", Section 235 the following is noted:

> "...One otherwise entitled to appellate review under a constitutional or statutory provision cannot be deprived of that right by any act or restriction of the court, or a public officer...
>
> ....The right to appeal is a statutory privilege which may be waived by an express agreement or by the parties voluntary acts or conduct. A party who abandons an action thereby waives his right to appellate review....."

It seems clear a party cannot be involuntarily divested of his right to appeal, which is exactly what happened in the instant case.

This Court, in United States v. Adams, 73 U.S. 101, 107, found: (1868)

> "..the 5th section of the act of March 3, 1863, under the proceedings in appeal were had, enacts that "either party may appeal to the Supreme Court of the United States from the final judgement or decree which may hereinafter be rendered in any case by said court, wherein the amount in controversy exceeds $3000.00 under such regulations as said Supreme Court may direct; Provided, that such appeal shall be taken within ninety days after the redention of the judgement.
>
> This language implies that taking an appeal is a matter of right, and is something which the party as distinquished from court may do. When the court has rendered it's judgement, "either party may appeal," that is has the right to appeal, and may exercise that right by his own volition. The court cannot prevent it, nor is the right dependent upon any judicial discretion...."

Nothing could be clearer. The above might be older caselaw, but in conjunction with Douglas v. California, supra, 372 U.S. at 356, the two cases did indeed go "hand in hand" so

to speak. The appeal in the instant case is as a matter of right, pursuant to AS 22.05.010, and the appeal from the Superior Court to the Alaska Supreme Court could not have been denied as a matter of law, and expecially under the circumstances leading to the dismissal of the appeal and the blatant dismissal of the case.

As for the proposition that an appeal cannot be dismissed by a "public officer" (4 Am Jur. 2d "Appeal & Error", Section 235), a judge is a public officer. See Barmack v. State, 276 So.2d 247, 250, Fla. App. (1949) and State ex inf Stephens v. Fletchall, 412 S.W.2d 423, 425, Missouri, (1963). Chief Justice Moore is a "public official" or "public officer" and cannot, as already pointed out, didmiss an appeal as a matter of right.

2. The Denial of the Appeal Under the Circumstances Outlined in Item 1 Does Indeed Constitute a Denial of Due Process of Law, Mandated by Amendment 14, Federal Constitution.

This argument begins with Boddie v. Connecticut, 401 U.S. 371, (1971). At 374, Mr. Justice Harlan spoke for the majority:

> "...At its core, the right to due process reflects a fundamental value in our American system. Our understanding of that valuethat value is the basis upon which we have resloved this case.
>
> Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner. Without such a legal system, social organization and cohesion are virtually impossible; with the ability to seek regularized resolution of conflicts, individuals are capable of interdependent action that enables them to strive for achievements without the anxieties that would beset them in a disorganized society. Put more succinctly, it is this injection of the rule of law that allows society to reap the benefits of rejecting what political theorists call the state of nature.

American society of course, bottoms its systematic definition of individual rights and duties, as well as it's machinery for dispute

settlement, not on custon or the will of strategically placed individuals, but on the common law model. It is to the courts, or other quasi-judicial bodies, that we ultimately look for the implementation of a regualized, orderly process of dispute settlement. Within this framework, those who wrote our original constitution, in the Fifth Amendment, and later those who drafted the Fourteenth Amendment, recognized the centrality of the concept of due process in the operation of this system. Without this guarantee that one may not be deprived of his right, neither liberty or property, without due process of law, the state's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things.....

The Court in Boddie goes on about Boddie and the defendants being "would-be plaintiffs" whose only avenue is the state court. In the instant case, the actual plaintiff being clearly unsatisfied with the result at

the Superior Court level, decided to appeal the adverse rulings, only to be shut down by the Cheif Justice of the Alaska Supreme Court, illegally, and unconstitutionally, and instantly. Appeal to the Supreme Court of Alaska was the only avenue open to the plaintiffs, and as already pointed out, said appeal is cloaked in due process. What happened was a clear denial of due process of law, and access to the courts, mandated by due process.

Boddie, at the very least, makes it perfectly clear that access to the courts is rooted in due process, and that right cannot be violated in absence of a "countervailing state interest of overriding significance..." 401 U.S. at 377.

In the instant case, there could be no countervailing state interest that would come into play.

Here, the Chief Justice of the Alaska Supreme Court had to violate the statute that mandated the appeal a matter of right,

AS 22.05.010, and violate Alaska Rule of Appellate Procedure 503(5)(f) by deciding the case as an individual justice where in the Rule such action is forbidden, and when "turning" the Motion into one for "reconsideration" violated Appellate Rule 503 (5)(g), which mandates that Motion's for Reconsideration are to be heard by the FULL Court. Chief Justice Moore could not, as a matter of law, do what he did, but he did, and the petitioner's submit he will not get away with it.

In determining what procedural safeguards the Constitution requires in a particular case, the United States Supreme Court weighs several factors:

(1) The private interest that will be affected by the official action;

(2) The risk of erroneous deprivation of such interest through the procedures used, and the probative value, if any, of the additional or substitute procedural safeguards;

(3) The government's interest, including the function involved and the fiscal and administrative burdens that the additional or substantive procedure requirement would entail. Zinernon v. Burch, 110 S.Ct. 975, 984, (1990) and Matthews v. Eldridge, 424 U.S. 319, 335, (1976).

The private interest is the statutory right to appeal which has been rudely taken away, and that is certainly an erroneous depriviation, and as for additional safeguards, there are none. The avenue of appeal was the only "way to go" in this case, and that right was taken away.

The Ninth Circuit has found that an indispensable element to any due process claim is constitutional or statutory entitlement. Myers v. U.S. Parole Commission, 813 F.2d 957, 963, 9th Circuit, (1987). As already stated, at the very least the appeal is a statutory right, and Alaska has not yet ruled upon whether an appeal is a constitutional right, which would

certainly seem to be the case.

In Alaska, "procedural due process" and what it constitutes under any particular set of circumstances depends on the nature of of the governmental function involved and the private interest affected by the governmental action. While it is manifest that no one has a vested right in an particular mode of procedure such that legislative change is prohibited, due process does require that a substantial and efficient remedy remain available or that one be provided when a pre-existing defense is statutorily limited. Arctic Structures v. Wedmore, 605 P.2d 426, 436, Alaska, (1979) citing Morrissey v. Brewer, 408 U.S. 471, (1972), Boddie, supra 401 U.S. 371, (1971) and Yakus v. United States, 321 U.S. 414, (1944).

As already stated, the private interest affected is the statutory right to appeal.

In dealing with Amendment 14, the Alaska Supreme Court, in Estate of Minor v. Commercial

Fisheries, ect, 635 P.2d 827, 829, Alaska, (1981) that the basic tenet of due process is that its prerequisites are state action and the deprivation of an individual interest of sufficient importance to warrant constitutional protection.

Surely an appeal which was illegally and unconstitutionally dismissed would warrant constitutional protection, expecially when the offending Justice of the Alaska Supreme Court had to violate a statute and his own Rules of Court to do it.

Now to the true meaning of due process, recently "handed down" by this Court in Collins v. City of Harker Heights, Texas, 112 S.Ct 1061, 1069, (1992):

> "...The Due Process Clause of the Fourteenth Amendment was intended to prevent government 'from abusing its power' or employing it as an instrument of oppression. DeShaney v. Winnebago County Department of Social Services, 489 U.S. at 196, quoting Davidson v. Cannon, 474 U.S. 344, 348, (1986)...."

The history of the Due Process Clause

as defined by this Court reflects the traditional and common sense notion that the Due Process Clause, like it's forebear the Magna Carta, was intended "to secure the individual from the arbitrary exercise of the powers of government.' Hurtado v. California, 110 U.S. 516, (1884) and Daniels v. Williams, 474 U.S. 327, 331, (1986) See also Corwin, The Doctrine of Due Process of Law before the Civil War, 24 Harvard Law Review 366, 368, (1911).

In the instant case, it simply cannot be looked upon as something other than the arbitrary exercise of the powers of government. Due process has been violated as a matter of la State action is invalid where it passes the bounds of reason and assumes the character of a merely arbitrary fiat. Purity Extract & Tonic Co. v. Lynch, 226 U.S. 192, 204, (1912). Wisconsin v. Constantineau, 400 U.S. 433, 436, (1971) is interesting for the purposes of this argument. There, this Court found "...It is

significant that most of the provisions of the Bill of Rights are procedural, for it is procedure that marks much of the difference between the rule by law and the rule by fiat.."

But what happens when the procedures are blantantly violated, and in so doing the matter becomes the rule of fiat?

Mr Justice Black, in his dissent in Boddie v. Connecticut, 401 U.S. 371, at 391, states:

> "...Civil lawsuits, however, are not like governmental prosecutions for crime. Civil Courts are set up by government to give people who have quarrels with their neighbors the chance to use the neutral governmental agency to adjust their differences. In such cases the government is not usually involved as a party, and there is no depriviation of life, liberty, or property as punishment for crime. Our Federal Constitution, therefore, does not place such private disputes on the same high level as it places criminal trials and punishment. There is consequently no necessity, no reason, why government should in civil trials be hampered or handicapped by the strict and regid due process the Constitution has provided to protect people charged with crime...."

This big question is this? How is it possible for a criminal defendant to have a greater due process right than an individual involved in a civil action? Would such an assertion not also be a denial of equal protection under the law mandated by Amendment 14? Are not individuals who are involved with the courts on an equal footing for the purposes of Amendment 14, whether they be involved in criminal or civil litigation? If what Justice Black states in his dissent is true, would not individuals involved in civil litigation be the "suspect class" for the purposes of the 14th Amendment, and hence a violation of the Equal Protection Clause of Amendment 14?

The time has come to set that matter to rest.

Is it not true that if an appeal is a statutory right and this Court has ruled in Douglas v. California, 372 U.S. 353, (1963) that due process applies and must be adhered to does the statutory right not become a clear

constitutional right, since due process has attached?

The petitioners should think so, and this question is ripe for determination and adjudication by this most Honorable Court.

At any rate, what makes this argument viable is the simple fact that if civil and criminal appeals were on the same footing, surely the Chief Justice of the Alaska Supreme Court would not have dared violate his own Rules of Court and do what he did. He certainly would have not dared do so in a criminal appeal, and the thought is unthinkable, and such a thought should also be equally unthinkable in a civil appeal.

Due process is due process; there cannot be more due process in a criminal appeal than a civil one, any more than there can be more due process in a civil appeal than a criminal appeal.

To furthur the point, this Court in Lindsey v. Normet, 405 U.S. 56, 77, (1972),

found that when an appeal is afforded, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.

Without furthur complicating matters with an equal protection argument, is not "denial of equal protection" a denial of due process of law as well? The answer to that question is yes, because, as already stated, the Due Process Clause was intended "to secure the individual from the arbitrary exercise of the powers of government." Hurtado v. Californi 110 U.S. 516, 531-2, (1883). At 532, the "read" is interesting:

> "...In this country written constitutions were deemed essential to protect the rights and liberties of the people against the encroachments of power delegated to their governments, and the provisions of Magna Carta were incorporated into bills of rights. They were limitations upon all powers of government, legislative as well as executive and judicial...."

The term "judicial" is interesting here. Chief Justice Daniel J. Moore Jr. of the Alaska Supreme Court was prevented from doing what he

did by AS 22.05.010, and the Rules of Alaska Appellate Procedure. This is the denial of due process; he acted in a capricious manner, in violation of statutes and rules which prevented the arbitrary and capricious action. Hurtado, supra, at 535 is equally interesting:

> "...In the 14th Amendment by parity of reason, it refers to that law of the land in each State, which derives it's authority from the inherent and reserved powers of the State, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws, and alter them at their leisure. "The 14th Amendment" as was said by Mr. Justice Bradley in Missouri v. Lewis, supra, "does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States seperated only by an imaginary line. On the other side of this line might be a right of trial by jury, and on the other side no such right. Each State proscribes its own modes of judicial proceeding....."

This is very true, but this Court has found, as already stated, that when a state does provide for an appeal, due process attaches, and said appeal cannot be granted to some and

capriciously or arbitrarily denied to others. Douglas v. California, supra, 405 U.S. at 356, (1963); Lindsey v. Normet, supra, 405 U.S. at 77, (1972).

The interest affected here is a "liberty" interest. In Munn v. Illinois, 94 U.S. 113, (1876), the dissent of Mr. Justice Field is interesting here, at 142:

> "...No State "shall deprive any person of life, liberty or property without due process of law," says the 14th Amendment to the Constitution. By the term "life," as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world. The depriviation not only of life, but whatever God has given to everyone with life, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision.
> By the term "liberty," as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison.

> It means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others, as his judgement may dictate for the promotion of his happiness; that is, to pursue such callings and avocations as may be most suitable to develope his capacities, and give to them their highest enjoyment...."

In pursuit of these "enjoyments" and in pursuit of a statutorily mandated right to appeal, Justice Moore rudely interrupted said pursuit, by decreeing "by virtue of divine right" and violating not only the statute, but, as already stated, Rules of Appellate Procedure created by the very body in which Chief Justice Moore is a member.

There is no question whatsoever Justice Moore denied due process of law to he petitioners.

Just where the doctrine of due process in a criminal proceeding is more compelling than due process in a civil proceeding is not known to the petitioners, and such should certainly not be the case.

Since this Court has found the doctrine of due process attaches once an appeal is perfected, the statutory right to appeal becomes both a statutory right and also a constitutional right as well.

The petitioners would find it hard to believe this very argument has not been presented in either this forum before, or some other forum, but, it is possible this argument has not been raised, but as already stated, the petitioners would find such a notion hard to believe.

At any rate, the provisions for the protection of life, liberty, and property are to be largely and liberally construed in favor of the citizen. Ex Parte Lange, 85 U.S. 163, 179, (1873), and the 14th Amendment is to be liberally construed to carry out the purpose of the framers of the Amendment. Strauder v. West Virginia, 100 U.S. 307, 320, (1879).

When a federal right has been specially set up and claimed in a state court, it is the

province of the United States Supreme Court to enquire not merely whether it was denied in express terms but also whether it was in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by the United States Supreme Court would fail in its purpose in safeguarding constitutional rights. Norris v. Alabama, 294 U.S. 580, 586, (1935).

It is the duty of the United States Supreme Court to decide for itself facts or constructions upon which federal constitutional issues rest. Kern-Limerick v. Shurlock, 347 U.S. 110, 119, (1954).

CONCLUSION

It is indeed pitiful, that in America, the 1990's that the Chief Justice of a State Supreme Court would violate his own Rules of Court and a statute to boot to block the appeal in the instant case. The reasoning is unclear, but it must be remembered that at the Superior Court level, an unassigned judge entered ORDERS in this case he could not have entered.

This is the Chief Justice of the Alaska Supreme Court no less who violates Alaska Appellate Rule 503(5)(f) in determining the merits of an appeal being an individual justice, and reverting an "opposition" to a Motion for Reconsideration, and ruling on the reverted Motion as an individual Justice, in violation of Alaska Appellate Rule 503(5)(g). This is not how the system works, and these antics should not be tolerated. As already stated, there is no constitutional mandate that a civil appeal is entitled to less due process

than a criminal appeal. Just the mere mention of equal protection under the law would immediately indicate such is not possible, for no matter how the matter is sliced, individuals are equally situated whether the litigation be civil in nature or criminal. Of course due process protects the individual from the arbitrary exercise of governmental power, so such a doctrine as more due process in a criminal proceeding must fail on these grounds alone, if it indeed came down to it.

Appeal in Alaska is a statutory right, and since this Court has ruled that once an appeal is perfected due process does apply, the right to appeal not only is statutory, but on these grounds becomes a constitutional right as well. The Appellate Courts in Alaska are mute on this subject, not because said Courts want to be, but because the matter has yet to be entertained by them. Of course it is not the responsibility of this Court to rule on the merits of the Alaska Constitution, but, as

a matter of law, it must rule upon the 14th Amendment to the federal constitution. It has been violated in this case, and grossly. For this Court to deny Certiorari would in itself be the exercise of the arbitrary and capricious powers of government, in this case, the judiciary, again.

The American People grow weary of the arbitrary exercise of the powers of government. As we close in on the dawn of the 21st century, the Nation finds itself in constitutional decline. The Constitutional and what it stands for is continually being "widdled away" away, along with the rights of the people. Now the President of the United States he wants to find a way where police may search peoples homes for weapons without a warrant in the housing projects of Chicago. What will be next if this is allowed to happen?

As communism fails just about everywhere else in the world, this great nation, founded on the principles of truth and justice

finds itself on the road to a brand of capitalism which is only slighly different from outright commumism or socialism. As time progresses and society matures, normally society becomes more tolerent. Such is not the case in American at this time, with a press only bent on what bad is happening, and certainly not the good.

At any rate, there can still be law and order with constitutional tolerance. The founding father did not intend the federal Constitution be strictly and conservatively construed. This own Court's rulings, by the likes of Mr. Justice Holmes, Mr. Justice Field, Mr. Justice Marshall, Mr. Justice Frankfurter, Mr. Justice Hughes, and the like, clearly indicate the Constitution is supposed to be liberally construed. Common sense dictates such a point. It is not the function of any Court to be the protector of the unconstitutional antics of any person or legislature, and let us not forget corporations. A very long and

bitter struggle ensued to back the play of independence in the beginning. History cannot be thrown away simply because one wants to make a name for himsel/herself or enjoy the power which he/she possesses. There must be sound reasoning behind every ruling of any court, and the unconstitutional cannot be made constitutional because a republican President appointed so and so and a democratic President appointed so and so. This folks, is not how the system works. Scholars of the law are to be appointed, regardless of political motivation or preference. Politics are politics, however. Politics is not a game the Supreme Court of the United States is in a position to play, and gratefully, this Court has not played the game.

The citizens of the United States are not the "mere" people. The citizens are the government of the United States, and it is in the "peoples" benefit that this Court even exists. It MUST perform its function in this

case. Fundamental constitutional rights are to be vindicated here, constitutional rights which should have never been violated in the first place. By refusing this Application, this Court tells the citizens of the United States that the Constitution is there, but no one need pay attention to it in the performance of their duties, whether those duties be legislative, executive, or judicial in nature. Of course, in such a scenerio, the "checks and balances" system would be void, and such a system is the backbone of this great Nation.

The time has come for this Court to issue a blanket ruling on the meaning of due process of law, and how it applies to criminal and civil appeals, and how of course, the application of said due process is no greater nor no less regardless of the forum be criminal or civil in nature. An appeal, once perfected, is a constitutional right, and there is no difference whatsoever between an appeal which is criminal and once which is civil, for the

purposes of the doctrine.

This Court MUST perform it's function in this case, because if the Court does not, there is no such a thing as due process of law, and the very existence of the thought of it is a farce.

JUDICI OFFICIUM SUUM EXPEDENTI NON PARETUR

Respectfully Submitted at Anchorage, Alaska, this 12TH day of April 1994.

Gerald R Budd
GERALD R. BUDD

Carolyn M. Budd
CAROLYN BUDD

BY: Jefferson A Mallette
JEFFERSON A. MALLETTE

APPENDIX A

App. 1

IN THE SUPREME COURT FOR THE STATE OF ALASKA

Case Title: BUDD V. CITY OF SEWARD

SUPREME COURT CASE # S-6029

11/24/93

ORDER

IT IS ORDERED: THE OPPOSITION TO NOTICE TO ACCEPT LATE FILED APPEAL NOVEMBER 5, 1993, IS TREATED AS RECONSIDERATION OF THE ORDER ISSUED NOVEMBER 5, 1993. THIS ORDER IS VACATED AND MOTION ACCEPT LATE FILED NOTICE OF APPEAL IS DENIED. THIS CASE IS CLOSED. ENTERED AT THE DIRECTION OF CHIEF JUSTICE MOORE ON NOVEMBER 23, 1993.

cc: APPEALS DIVISION/3AN-90-5081 CI

Clerk of the Appellate Courts

APPENDIX B

App. 2

Alaska Statute 22.05.010; Jurisdiction of the Alaska Supreme Court:

(a) The Supreme Court has final appellate jurisdiction in all actions and proceedings. However, a party has only one appeal as a matter of right from an action or proceeding commenced in either the district court or the superior court.

(b) Appeal to the Supreme Court is a matter of right only in those proceedings from which there is no right of appeal to the court of appeals under AS 22.07.020 or to the superior court under AS 22.10.020 or AS 22.15.240.

(c) A decision of the superior court on an appeal from an administrative agency decision may be appealed to the Supreme Court as a matter of right.

(d) The Supreme Court may in its discretion review a final decision of the court of appeals on application of a party under AS 22.07.030. The Supreme Court may in

its discretion review the final decision of the superior court on an appeal of a civil case commenced in the district court. In this subsection "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals.

(e) The Supreme Court may issue injunctions, writs, and all other process necessary to the complete exercise of its jurisdiction.

APPENDIX C

App. 4

Rule 503, Alaska Rules of Appellate Procedure: Motions

(a) General. An application for relief of any kind from either appellate court ancillary to a case in that court shall be made by written motion. A stipulation shall not be sufficient.

(b) Format. A motion filed in the appellate courts must be in the form prescribed by Rule 513.5(b). The motion must include:

(1) A brief, complete statement of the reasons in support of the motion;

(2) An affidavit where the facts relating to the motion are not otherwise proven;

(3) If the motion is for an extention of time period prescribed by these rules, a statement of each extention of that time period previously granted to that party, indicating the length of such extention;

(4) The points and authorities on which the moving party relies;

(5) An appropriate order for execution by the court should the motion be granted.

(c) Filing and Service. The original of all motions and responses must be filed with the clerk, together with proof of service on all other parties. Two copies of a motion to the Supreme Court or a response to a motion shall be submitted with the original.

(d) Opposition to Motion--Disposition. Adverse parties have seven days after service of a motion within which to file and serve memoranda in opposition, counter motions and affidavits. As soon as practical after the expiration of the seven day period, the motion will be considered. A reply memorandum may not be filed by the moving party unless otherwise ordered.

(e) Motion determined by the Clerk. Routine, unopposed may be ruled upon by the clerk without reference to the court or a judge or justice. Motions for extentions of

time for filing briefs may be ruled upon by the clerk pursuant to Appellate Rule 503.5. A party who is aggrieved by the decision of the clerk on a motion may file a motion for reconsideration of the clerk's order, which motion will be determined by an individual justice or judge. The clerk may not determine a motion for extention of time to file a document if the time period specified in these rules for filing the document, including any previous extentions has already expired when the motion is filed.

(f) Motions determined by an Individual Justice or Judge. Any motion which would have the affect of determining the merits of a proceeding, and which is not appropriate for determination by the clerk, may be determined by an individual justice or judge without reference to the full court.

Motions shall be referred to justices and

judges by the clerk under the direction of the court. A justice or judge may in his discretion refer such a motion for decision by the full court. A motion which would have the effect of determining the merits of a proceeding, a motion for reconsideration of an order entered by an individual justice or judge, shall be considered by the full court. An individual justice or judge may, in connection with such a motion, enter such orders as may be necessary to prevent irreparable harm prior to the time the full court is able to consider the motion. Motions for reconsideration of orders of the full court granting or denying motions will be accepted only on a showing of good cause.